

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM CARL ALEXANDER,

Defendant-Appellant.

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UNPUBLISHED

July 20, 2004

No. 248201

Oakland Circuit Court

LC No. 02-186849-FC

Before: Jansen, P.J., and Meter and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(b). The trial court sentenced him to three concurrent terms of 33 1/3 to 50 years' imprisonment. We affirm.

Facts

Shamika Hull, sixteen at the time of trial, testified as follows: Defendant dated her mother and lived with Hull and her family for approximately ten years. One day when Hull was thirteen years old, her mother was in the hospital overnight. After she fell asleep, she awoke to find defendant in the bedroom with her. He touched her vagina through her clothes. She did not tell her mother about the incident because she thought her mother would not believe her. One day when Hull was fourteen years old, defendant approached her, pulled down his pants and her pants and underwear, and penetrated her vagina with his penis. He was already wearing a condom underneath jogging pants or shorts when he approached her. After this incident, defendant began disciplining her less than her siblings and giving her money and clothes. Over the next several weeks, while Hull was still fourteen years old, defendant penetrated her vagina with his penis two more times; both times he was already wearing a condom underneath his clothes when he approached her. Hull did not tell her mother about the abuse because she was scared.

Hull further testified as follows: When she was fifteen years old, defendant tried to sexually assault her again, but he was not successful, so he instead went outside to where people were working on Hull's mother's vehicle. That day, Hull told her younger sister about the abuse and "ran away" to a friend's house. Her mother found her at the friend's house, and Hull, at some point, told her mother about the abuse.

On cross-examination, defendant's attorney pointed out that, at the preliminary examination, Hull had testified that defendant pulled aside her shorts during the third incident of penetration, whereas at trial she testified that he pulled her shorts down. Hull then testified that he pulled aside the shorts, and on redirect examination she clarified that he removed the shorts from her waist but did not take them all the way off her body.

Hull's mother, Sheila Hull, testified that Hull did not run away from home on the day that workers were repairing her vehicle. She further testified, contrary to Hull's testimony, that she did not take Hull to her grandmother's house on that day. She also testified that she believed her daughter with regard to the abuse allegations but that she still had some doubts about defendant's guilt. She stated that defendant was concerned about some of the boys with whom Hull was socializing and that he had expressed this concern to Hull. She also stated that Hull had been skipping some school.

Detective Maurice Martin of the Pontiac Police Department testified that he interviewed defendant and that defendant admitted having had penile-vaginal intercourse with Hull. Martin stated that defendant did not indicate how many times penetration occurred, but defendant did refer to the "times" of penetration, implying that it had occurred more than once. On cross-examination, defendant's attorney elicited that defendant did not admit to the abuse in his own handwritten statement and that he stated to the detective "I can say yeah I did this and take my chances in court. Or I can fight it all the way to the end in court. You all want something from me, I want closure too. How long will it be before court?"

Defendant categorically denied having sexually abused Hull. He testified that he did not in fact admit the abuse to Detective Martin. He stated that Hull likely made up the allegations of abuse in order to get him out of the house and to stop his disciplining of her.

The jury convicted defendant of three counts of CSC I.

#### Use of Word "Victim"

Defendant first argues that the prosecutor committed misconduct requiring reversal by referring to Hull as a "victim" during jury selection and during her opening statement. We disagree that reversal is required.

The prosecutor stated during jury selection, "how does everyone feel about the law, which specifically makes it a crime to have sex with a child . . . even if the child or the victim doesn't resist?" She also stated during jury selection, "[i]f a victim gets up on the stand, the [c]omplainant gets up on the stand, and tells what happened to her, and that proves the case beyond a reasonable doubt, is that enough for every single person here to convict?" During her opening statement, the prosecutor stated, "Shelia has four kids, two boys and two girls. One of those girls is Shamika Hull, she is the victim in this case." Finally, when discussing the elements

of the case, the prosecutor stated that she had to prove “a sexual act [with the] victim[],” “the victim[’s age],” and “that the Defendant and the victim lived in the same household.”<sup>1</sup>

In reviewing a claim of prosecutorial misconduct, this Court examines “the alleged misconduct in context to determine whether it denied the defendant a fair and impartial trial.” *People v McAllister*, 241 Mich App 466, 473; 616 NW2d 203 (2000), remanded on other grounds 465 Mich 884 (2001). However, defendant failed to preserve his claim for review on appeal because he failed to object to the prosecutor’s statements in the trial court. This Court will only review unpreserved claims if a curative instruction could not have removed any undue prejudice to the defendant or if manifest injustice would result from our failure to review the alleged misconduct. *Id.*; *People v Callon*, 256 Mich App 312, 329-330; 662 NW2d 501 (2003). Moreover, unpreserved, nonconstitutional claims are reviewed for plain error. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture under the plain error doctrine, the defendant must show that (1) an error actually occurred; (2) the error was plain, i.e., clear or obvious; and (3) the plain error affected substantial rights, i.e., it affected the outcome of the proceedings. *Id.* The reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.*; *Callon*, *supra*, 256 Mich App 329.

Here, a timely objection could have cured any prejudicial effect of the comments. *McAllister*, *supra*, 241 Mich App 473. Moreover, no manifest injustice or plain error is apparent with respect to the comments. First, during jury selection, the prosecutor was merely referring to victims *in general* and not to Hull specifically. With respect to the comments made during opening statements, we conclude that the prosecutor was merely indicating what she had to prove at trial, i.e., that Hull was a victim in the case. A prosecutor need not confine her arguments to the blandest possible terms. *People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001).

At any rate, given the substantial evidence in this case, including an admission by defendant that he engaged in penile-vaginal penetration with Hull, we conclude that the prosecutor’s use of the word “victim” did not affect the outcome of the proceedings. *Carines*, *supra*, 460 Mich 763.

Defendant additionally contends that his trial attorney rendered ineffective assistance of counsel by failing to object to the prosecutor’s use of the word “victim” and by defense counsel himself referring to Hull as a “victim.” During voir dire, the attorney stated, “the Prosecutor asks some of you . . . whether . . . she needs to show you more, other than what Shamika Hull is going to say. And, do any of you need . . . more than just what the victim is going to tell you, in order to find a conviction?”

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<sup>1</sup> Defendant, in his appellate brief, states that the prosecutor referred to Hull as a victim on page twenty-six of the first trial transcript. Defendant is mistaken. The prosecutor, on page twenty-six, merely asked the prospective jurors if they had ever been victims of a crime.

Because defendant failed to move for an evidentiary hearing below with respect to his claim of ineffective assistance of counsel, our review of this issue is limited to the existing record. *People v Nantelle*, 215 Mich App 77, 87; 544 NW2d 667 (1996). To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that the deficient performance likely affected the outcome of the proceedings. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

Defendant's ineffective assistance claim must fail. Indeed, the prosecutor's use of the word "victim" during this case, as well as defense counsel's brief reference to "the victim," did not affect the outcome of the proceedings, *id.*, especially considering that the trial court instructed the jury (1) that defendant was presumed innocent and (2) that the verdict must be based on the evidence, of which the attorneys' statements and arguments were not a part.

#### Sufficiency of the Evidence

Defendant next argues that the prosecutor presented insufficient evidence to sustain his convictions. "When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt." *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

Defendant premises his argument on Hull's testimony, arguing that it defied "patterns of known child predators and the laws of psychics and biomechanics." He refers to Hull's testimony in which she stated that defendant, at one point, touched her "private area" or her "vagina" through her clothes. He states that a vagina cannot be touched through clothes and that Hull must have equated her outer genital area with her vagina. He therefore argues that there was insufficient evidence, in Hull's other testimony, of defendant having penetrated Hull's vagina, because Hull was focusing on her outer genital area. This argument is patently without merit. Hull specifically testified that, on three separate occasions, defendant "put his penis *in* my vagina" (emphasis added). She testified with regard to each incident that she could feel the penis inside her. Her testimony provided sufficient evidence of penetration.

Defendant also refers to Hull's testimony in which she contradicted herself regarding whether defendant "pulled down" her shorts and underwear during some of the assaults or whether he "moved over" her shorts and underwear. This contradiction in testimony did not render Hull's testimony unusable. First, Hull clarified on redirect that she had essentially been equating her shorts having been "moved aside" with them having been "pulled down from her waist" but not necessarily removed from her body. Second, any contradictions in Hull's testimony merely went to her credibility in the eyes of the jury. See, generally, *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003).

Defendant states that penetration must have been impossible because Hull's shorts must have been binding her thighs and knees together. This argument is specious. Hull clearly

testified that penetration occurred, and this testimony did not defy the evidence introduced. There was no evidence that Hull's thighs and knees were "bound together."<sup>2</sup>

Defendant contends that Hull's testimony was inherently unbelievable because she (1) testified that defendant did not speak to her, threaten her, or touch her anywhere with the exception of putting his penis in her vagina; (2) testified that defendant wore a condom, even under his clothes, each time he approached, penetrated, and left her; and (3) had been known to lie. Once again, defendant's argument is without merit. The jury listened to Hull's testimony and evidently believed her. Any apparent gaps in her testimony and any evidence of her having lied in the past went to her credibility, which was a matter for the jury. *Id.* Contrary to defendant's implication, Hull's testimony was not so unbelievable that it defied physical reality.<sup>3</sup> See, generally, *People v Musser*, 259 Mich App 215, 219; 673 NW2d 800 (2003).

No error occurred with respect to the sufficiency of the evidence, especially considering the additional evidence introduced at trial – specifically, defendant's admission to the police that he had engaged in penile-vaginal penetration with Hull.

Affirmed.

/s/ Kathleen Jansen  
/s/ Patrick M. Meter  
/s/ Jessica R. Cooper

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<sup>2</sup> The shorts, for example, could have been stretched or could have fallen to Hull's ankles.

<sup>3</sup> While Hull testified that defendant did not "touch her anywhere else" (i.e., aside from putting his penis in her vagina) during the three incidents of penetration, a reasonable juror could have concluded that Hull was referring to "sexual" touching. In other words, Hull's testimony did not preclude the possibility of defendant having, for example, braced himself against Hull's shoulders. At any rate, it is not inconceivable that defendant achieved penile-vaginal penetration without any additional touching of Hull. Nor is it inconceivable that defendant wore a condom before, during, and after the incidents of penetration.